

CHAPTER 9

ADMINISTRATIVE SEPARATIONS

As an LN you will work with administrative separations at some point in your career. Generally the nuts and bolts of administrative separations are done at commands other than naval legal service offices (NLSOs). However, even the NLSOs are involved during certain aspects of the processing procedure. As a senior LN resigned to an independent duty billet, you may not only be required to take care of all the paper work required for administrative discharge processing, you may also be assigned to act as the recorder. So, no matter where you may be assigned as an LN, administrative separations are just another dimension to your rating. Therefore, it is to your advantage to be very familiar with the regulations and procedures of administrative separation processing. In this chapter you will be given a general working knowledge of the regulations and procedures of administrative separations. However, it is advised that whenever you are involved in administrative separations, review all reference material as two cases are never the same.

The policy of the Navy is to promote readiness by maintaining high standards of conduct and performance. To maintain these standards, it is necessary to provide a variety of means for the orderly and timely administrative separation of naval personnel to:

- make sure the Navy is served by individuals capable of meeting required standards of duty, performance, and discipline;
- maintain standards of performance and conduct through appropriate separation and characterization of service that stress the traditional concept of honorable military service; and
- achieve authorized force levels and grade distribution.

The Navy separation policy strengthens the concept that military service is a calling different from any civilian occupation.

When persons enter the naval service, the Navy invests substantial resources in their training, equipment, and related expenses. Separation before completion of a period of obligated service represents a loss of that investment while requiring increased

accessions. Conversely, retaining individuals in the naval service who will not or cannot conform to naval standards of conduct, discipline, and performance creates a high cost in terms of pay, administrative efforts, degradation of morale, and substandard mission performance. Both situations represent an inefficient use of limited defense resources.

We will use the terms *discharge* and *separation* in discussing the termination of a service obligation. SECNAVINST 1910.4A defines these terms as follows:

- **Discharge**—complete severance from all naval status gained by the enlistment or induction concerned.
- **Separation**—a general term that includes discharge, release from active duty, transfer to the Fleet Reserve or Retired List, release from custody and control of the military services, transfer to the Individual Ready Reserve (IRR), and similar changes in active or reserve status.

TYPES OF ENLISTED ADMINISTRATIVE SEPARATIONS

There are two types of separations given by the Armed Forces of the United States to enlisted service members: (1) punitive discharges and (2) administrative separations.

PUNITIVE DISCHARGES

Punitive discharges are authorized punishments of courts-martial. They can only be awarded as an approved sentence of a court-martial following a conviction for a violation of the *Uniform Code of Military Justice* (UCMJ).

There are two types of punitive discharges. The first type is a dishonorable discharge (DD). A DD can only be adjudged by a general court-martial (GCM) and is a separation under dishonorable conditions. The second type of punitive discharge is a bad-conduct discharge (BCD). A BCD can be adjudged by either a GCM or a special court-martial (SPCM) and is a separation under conditions other than honorable.

ADMINISTRATIVE SEPARATIONS

Members of the naval service may be separated administratively for many reasons. Some separations are characterized and some are not. We will discuss the different types of characterized and uncharacterized separations.

Any member being separated, except those separated for immediate reenlistment, must be advised of the purpose and authority of the Naval Discharge Review Board (NDRB) and the Board for Correction of Naval Records (BCNR) at the time of processing for such a separation.

Characterized Separations

Separations are characterized as honorable, general (under honorable conditions), or under other than honorable (OTH) conditions.

HONORABLE.— An honorable separation is with honor. The quality of the member's service has met the standards of acceptable conduct and performance of duty or is otherwise so meritorious that any other characterization would be clearly inappropriate.

An honorable separation requires a minimum final average for the current enlistment in performance and conduct marks of 2.8 and a minimum average in personal behavior of 3.0.

A member who would be eligible for a characterization of service as general may receive an honorable discharge if he or she was awarded certain personal decorations. These personal decorations could be, for example, the Medal of Honor, Navy Commendation, or Navy Achievement Medal.

GENERAL (UNDER HONORABLE CONDITIONS).— The general characterization is proper when service has been honest and faithful. However, significant negative aspects of the member's conduct or performance of duty outweigh the positive aspects. A characterization of separation as general is under honorable conditions and entitles the member to all veterans' benefits. A member would be eligible for a characterization of separation as general if the member's final average for performance and conduct marks fall below 2.8 and below 3.0 in personal behavior.

UNDER OTHER THAN HONORABLE CONDITIONS.— A characterization of OTH is appropriate when the reason for separation is based upon a pattern of adverse behavior or one or more acts that are a significant departure from the conduct expected from members of the naval service.

Persons who receive an OTH discharge are not entitled to retain their uniforms or wear them home. However, they may be furnished civilian clothing at a cost of not more than \$50. They must accept transportation in kind to their home of record. They are not eligible for notice of discharge to employers.

The Department of Veterans Affairs makes its own determination with respect to the benefits as to whether the discharge was under conditions other than honorable.

Uncharacterized Separations

These types of separations are separations that, due to the short duration of service, are uncharacterized.

ENTRY LEVEL SEPARATION.— A member in an entry level status (first 180 days of a period of continuous active military service) will ordinarily be separated with an entry level separation (ELS). The exceptions to this are (1) when characterization under OTH conditions is authorized under the reason for separation and is warranted by the circumstances of the case and (2) when characterization as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. These types of cases must be approved by the Secretary of the Navy (SECNAV).

VOID ENLISTMENT OR INDUCTION.— A member whose enlistment or induction is void will not receive a discharge certificate, characterization of service, or an ELS. The separation will be an order of release from custody and control of the Navy. Reasons supporting a void enlistment include the following:

- Enlistment without the voluntary consent of a person who has the capacity to understand the significance of enlisting. This may include enlistment of a person who was intoxicated or insane at the time of enlistment. It may also include a person who was coerced into enlisting by being presented with the option of enlisting or going to jail.

- Person under the age of 17.
- Deserter from another service.

BASES FOR SEPARATING ENLISTED PERSONNEL

This section lists the types of separations available for the particular bases of separation, the applicable procedures, including counseling where required, and defines these bases in general terms. Figure 9-1 shows

you an overview of all the possible types of administrative separations, the characterization of service that can be awarded for each type separation, the applicable *Naval Military Personnel Manual* (MILPERSMAN) articles and what type of procedure you use to effect the separation.

SELECTED CHANGES IN SERVICE OBLIGATION

Separation under this article is appropriate for general demobilization, reduction in authorized strengths, immediate enlistment or reenlistment, and

| NAVY ENLISTED ADMINISTRATIVE SEPARATIONS | | | |
|---|---|-------------------------------|--|
| <u>REASON FOR SEPARATION</u> | <u>CHARACTERIZATION OF SEPARATION</u> | <u>MILPERSMAN ARTICLE</u> | <u>ADMIN BOARD (A)/ NOTIFICATION (N)</u> |
| 1. EXPIRATION OF SERVICE OBLIGATION | HON/GEN ELS | 3620100 3620150 | |
| 2. CONVENIENCE OF GOVERNMENT | HON/GEN ELS | | (N); (A) if 6 yr |
| Dependency or Hardship | | 3620210 | |
| Pregnancy or Childbirth | | 3620220 | |
| Physical Condition Not Disability | | 3620200 | |
| Personality Disorder | | 3620225 | |
| Surviving Family Member | | 3620240 | |
| Other Designated Physical or Mental Condition | | 3620200 | |
| Parenthood | | 3620215 | |
| Aliens | | 3620250 | |
| Conscientious Objector | | 1860120 | |
| Further Education | | 3620235 | |
| 3. DEFECTIVE ENLISTMENT | | | |
| Minority | | 3620285 | |
| Under 17 | OOR | | (N) |
| Age 17 | ELS | | (N) |
| Defective Enlistment | HON/ELS OOR | 3620283 | (N) |
| Erroneous Enlistment | HON/ELS OOR | 3620280 | (N); (A) if 6 yr |
| Fraudulent Enlistment* | HON/GEN ELS/OTH OOR | 3630100 | (N); (A) if 6 yr or OTH |

Figure 9-1.—Navy enlisted administrative separations.

NAVY ENLISTED
ADMINISTRATIVE SEPARATIONS

| <u>REASON FOR SEPARATION</u> | <u>CHARACTERIZATION OF SEPARATION</u> | <u>MILPERSMAN ARTICLE</u> | <u>ADMIN BOARD (A)/ NOTIFICATION (N)</u> |
|--|---|----------------------------------|--|
| 4. ENTRY LEVEL PERFORMANCE AND CONDUCT | ELS | 3630200 | (N); (A) if 6 yr |
| 5. UNSATISFACTORY PERFORMANCE | HON/GEN | 3630300 | (N); (A) if 6 yr |
| 6. HOMOSEXUALITY (As regulations are presently changing in July 1993, refer to the current instructions regarding this category) | | | |
| 7. SECURITY | HON/GEN OTH/ELS | 3630700 | (N); (A) if 6 yr or OTH |
| 8. DRUG/ALCOHOL ABUSE REHAB FAILURE | HON/GEN | 3630500 3630550 | (N); (A) if 6 yr |
| 9. MISCONDUCT | HON/GEN ELS/OTH | | |
| Minor Disciplinary Infractions | | 3630600 | (N); (A) if 6 yr or OTH |
| Pattern of Misconduct | | 3630600 | (N); (A) if 6 yr or |
| Misconduct due to Drug Abuse* | | 3630620 | (N); (A) if 6 yr or OTH |
| Commission of Serious Offense* | | 3630600 | (A) |
| Civilian Conviction* | | 3630600 | (A) |
| 10. SEPARATION IN LIEU OF COURT-MARTIAL | HON/GEN ELS/OTH | 3630650 | (N); (A) if 6 yr or OTH |
| 11. SEPARATION IN BEST INTEREST OF SERVICE | HON/GEN ELS | 3630900 | (N) |
| 12. UNSATISFACTORY PERFORMANCE IN READY RESERVE | HON/GEN ELS/OTH | 3630800 | (N); (A) if 6 yr or OTH |
| 13. DISABILITY | HON/GEN ELS | 3620270 SECNAVINST 1850.48 | (N) |
| 14. WEIGHT CONTROL FAILURE | HON/GEN | 3620260 | (N); (A) if 6 yr or |

*MANDATORY PROCESSING IN CERTAIN CASES

Figure 9-1.—Navy enlisted administrative separation—Continued.

other early-out programs. Also, acceptance of an active duty commission or permanent appointment, or acceptance into a program; for example, officer candidate school (OCS), leading to an active duty commissioner appointment will result in a separation under this article.

The member must submit an official letter of request for separation via his or her commanding officer (CO) to the Chief of Naval Personnel (PERS-28). The request must include a copy of the acceptance or appointment letter from the officer program and a copy of the reporting requirement for the officer program. The Chief of Naval Personnel makes final determination on the member's request.

The member will receive an honorable, general, or ELS characterization of service.

For additional guidance on separation processing by reason of selected changes in service obligation, refer to the MILPERSMAN.

EXPIRATION OF ENLISTMENT OR FULFILLMENT OF SERVICE OBLIGATION OR EXPIRATION OF TOUR OF ACTIVE SERVICE

Unless voluntarily or involuntarily retained beyond normal expiration of term of service, enlisted members will be discharged upon normal date of expiration of enlistment, extension of enlistment, or period of induction, provided the member does not have additional service obligations. The member will receive an honorable, general, or ELS characterization of service.

For additional guidance on separation processing by reasons of expiration of enlistment, fulfillment of service obligation, or expiration of tour of active service, refer to the MILPERSMAN.

CONVENIENCE OF THE GOVERNMENT

The Chief of Naval Personnel may authorize or direct the separation of enlisted or inducted members before their expiration of enlistment. A member cannot request separation for reasons pertaining to involuntary discharge or separation. You may not effect a separation of a member for convenience of the government until all outstanding disciplinary actions involving the member are resolved. Characterization of service will be honorable, general, or ELS.

COs with special court-martial convening authority (SPCM CA) have the authority to effect the separation

of members provided the member has received counseling (when required), all disciplinary action has been completed (if applicable), and the member does not object to the separation. If the member objects, send the case to the Chief of Naval Personnel (PERS-281) for final determination.

There are several subcategories of the convenience of the government basis for discharge. We will discuss each one individually.

Dependency or Hardship

Upon request of a member separation may be directed when genuine undue hardship exists. Since some Navy personnel and their families encounter hardships while serving on active duty, they may request separation from the naval service from the SPCM CA. The member's request must show that:

- a severe hardship exists, not normally encountered and resolved by other members of the naval service.
- the hardship affects the member's immediate family.
- the hardship is not of a temporary nature and cannot be resolved within the near future.
- the member and his or her family have made every reasonable effort to alleviate the hardship.
- the hardship has occurred or has been severely aggravated since entry into the service.
- there are no other family members or relatives nearby who are capable of providing the necessary assistance.

Except under extraordinary circumstances separation for hardship will not be authorized solely for financial or business problems, indebtedness, personal convenience, member's physical or mental health, moral support to a family member whose life expectancy is estimated at less than 6 months, custody battles, or divorce proceedings.

You must inform enlisted personnel who desire to request separation for hardship reasons of the proper procedures to follow. You should clearly explain to each applicant that his or her request will be submitted via official channels, that submission is no assurance that the discharge will be authorized, and that the decision is within the sole discretion of the SPCM CA. You should also explain to the member that once a request is

approved by the SPCM CA it is irrevocable except in the most unusual circumstances.

The request for hardship discharge format and a list of required enclosures can be found in the MILPERSMAN.

The SPCM CA sends all approved or disapproved hardship requests to the Chief of Naval Personnel (PERS-40HH) for review and record purposes.

The characterization of service will be honorable, general, or ELS.

For additional guidance on separation processing by reason of convenience of the government due to hardship, refer to the MILPERSMAN.

Pregnancy or Childbirth

This type of separation is voluntary. A written request by the female service member initiates the process. The request may be denied if the member is serving in a critical rate, has received special compensation during the current enlistment, has not completed obligated service incurred, or has executed orders in a known pregnancy status.

Officers exercising SPCM CA are authorized to separate members requesting separation under this article. COs or officers in charge (OICs) with SPCM CA send the request to the Chief of Naval Personnel (PERS-282) for final action when the member has not completed obligated service incurred for fully or partially funded education or has not completed obligated service incurred for enlisted education and training. Characterization of service will be honorable, general, or ELS.

For additional guidance on separation processing by reason of convenience of the government due to pregnancy or childbirth, refer to the MILPERSMAN.

Parenthood

This category is for separation of a member who is unable to perform duties assigned, is repetitively absent, or is unavailable for worldwide assignment or deployment due to parenthood.

The Chief of Naval Personnel or officer exercising SPCM CA may direct separation. The Chief of Naval Personnel (PERS-282) may direct separation when the member objects to the discharge and final resolution rests with him or her. Commands may not initiate separation processing until the member has been counseled formally about his or her deficiencies and has

been afforded an opportunity to overcome the deficiencies. Use the notification procedure for processing. The characterization of service will be honorable, general, or ELS.

For additional guidance on separation processing by reason of convenience of the government due to parenthood, refer to the MILPERSMAN.

Further Education

This category allows for separation of a member to attend college, vocational school, or technical school. The requested separation must be within 3 months of the member's expiration of active obligated service (EAOS). The Deputy Chief of Naval Personnel is the approving authority for this early release program. COs are not delegated authority to separate members under this program.

All personnel desiring early release under this program should send their requests to the Deputy Chief of Naval Personnel via the Chief of Naval Personnel (PERS-282), their CO, and the area type commander.

For additional guidance on separation processing by reason of convenience of the government due to furthering of education, refer to the MILPERSMAN.

Conscientious Objectors

Conscientious objectors are persons who, by reason of religious training and belief, have a firm, fixed, and sincere objection against participating in war in any form or the bearing of arms.

No vested right exists for any member to be discharged from the Regular Navy at his or her own request before his or her EAOS even for conscientious objection. The Chief of Naval Personnel must approve a member's administrative discharge before completion of his or her service obligation. If separation is deemed warranted, the type of discharge is determined by the member's service record and the provisions of DOD Directive 1332.14.

When processing a member's application for separation by reasons of conscientious objection, refer to the MILPERSMAN for procedures and guidelines.

Designation as a Surviving Son and/or Daughter

Enlisted members who become surviving sons or daughters as defined in the MILPERSMAN may apply and promptly be discharged.

Any request for discharge under this article will be submitted in writing only by the member and may be approved by the Chief of Naval Personnel (PERS-282) or by the CO or OIC having SPCM CA. Characterization of service will be honorable, general, or ELS.

For additional guidance on separation processing by reason of convenience of the government due to surviving son or daughter status, refer to the MILPERSMAN.

Other Designated Physical or Mental Conditions

This category provides for the separation of members on the basis of designated physical or mental conditions considered inherent or developmental defects that do not constitute a physical disability. Such conditions are those considered to interfere with a member's performance of duty or pose a threat to his or her safety or well-being.

These conditions include but are not limited to the following:

- Motion/air sickness—must be verified by an otolaryngologist (ENT) doctor. No counseling is required before initiation of separation processing.
- Enuresis (bed-wetting)—must be medically confirmed by a urologist. No counseling is required before initiation of separation processing.
- Somnambulism (sleepwalking)—must be medically confirmed. A sworn statement from the military member must be included documenting at least one sleepwalking episode. The episode must be witnessed by at least two military members. No counseling is required before initiation of separation processing.
- Allergies—must be medically confirmed by an allergy or internal medicine evaluation. No counseling is required before initiation of separation processing.
- Excessive height—must be medically confirmed by an orthopedic consultation. No counseling is required before initiation of separation processing.

Personality Disorders

Separation may be directed by the Chief of Naval Personnel (PERS-282) or an officer with SPCM CA when a member has been diagnosed with a personality disorder and that such condition will interfere with the

member's performance of duty or pose a threat to his or her safety or well-being.

The member's CO is the initial authority responsible for determining if and when a member will be processed. Members may be separated under this article provided that:

- medical diagnosis is made by a competent military medical authority that concludes that the disorder is of such severity that it renders the member incapable of serving adequately.
- there is documented evidence that the diagnosis of personality disorder interferes with the member's performance of duty.
- documented interference must be a part of the CO's endorsement, as mere presence of a personality disorder is not a bar to naval service.
- counseling has been initiated whereby the member has been advised of his or her deficiencies and has been afforded the opportunity to overcome those deficiencies (page 13 entry required except in those instances where it has been determined by medical authority that the member is self-destructive or a continuing danger to themselves or others).

Start processing by use of the notification procedure. You will send any discharge requests that require approval from the Chief of Naval Personnel (PERS-282) to him or her for final determination. Make sure cases approved by an SPCM CA are sent to PERS-282 with the required documentation.

Message requests for a personality disorder separation should be reserved for unusual circumstances. If the necessity arises to submit a message, the complete psychiatric evaluation must be quoted verbatim.

For additional guidance on separation processing by reason of convenience of the government due to personality disorder, refer to the MILPERSMAN.

Aliens

A member who is neither a natural born nor a naturalized citizen of the United States is an alien. A member may be separated upon his or her request with the approval of the Chief of Naval Personnel (PERS-282) on the basis of being an alien who no longer wishes to serve. You need to inform an alien seeking this type of discharge that discharge from the service under this article will be a permanent bar to becoming a

U.S. citizen. Characterization of service will be honorable, general, or ELS.

For additional guidance on separation processing by reason of convenience of the government due to status as an alien, refer to the MILPERSMAN.

WEIGHT CONTROL FAILURE

This category allows separation of a member, on active duty, by reason of weight control when a member fails to achieve prescribed physical readiness standards as outlined in OPNAVINST 6110. 1.

COs with SPCM CA have the authority to effect the separation provided the member has been counseled, all disciplinary action is complete, and the member does not object to the separation. If the member objects, send the case to the Chief of Naval Personnel (PERS-282) for final determination.

Use the notification procedure for processing. The characterization of service will be honorable, general, or ELS.

For additional guidance on separation processing by reason of weight control failure, refer to the MILPERSMAN.

PHYSICAL DISABILITY

This category provides for separation of a member on active duty, or active duty for training in excess of 30 days, by reason of physical disability upon determination that he or she is physically unfit to perform the duties of his or her rate.

A medical board must determine that a member is unable to perform the duties of his or her rate in such a manner as to reasonably fulfill the purpose of his or her employment on active duty.

The Chief of Naval Personnel (PERS-913) authorizes the separations for inactive duty members and members on active duty who are separated locally by their COs.

Characterization of service will be honorable, general, or ELS. A member may be separated for disability according to the *Disability Evaluation Manual*, SECNAVINST 1850.4C.

For additional guidance on separation processing by reason of physical disability for active and inactive duty members, refer to the MILPERSMAN.

DEFECTIVE ENLISTMENTS AND INDUCTIONS - ERRONEOUS ENLISTMENT

This category allows separation of a member on the basis of erroneous enlistment, reenlistment, induction, or extension of enlistment when:

- the enlistment would not have occurred if the relevant facts had been known by the Navy or had appropriate directives been followed;
- the enlistment was not the result of fraudulent conduct on the part of the member; and
- the defect is unchanged in any material respect.

A member may also be separated under this category on the basis of not meeting physical standards for enlistment.

If after discovering that a member's enlistment may be erroneous, and the CO with SPCM CA recommends that the member be retained, initiation of separation processing is not required when the defect is no longer present or the defect, other than a medical condition, may be waived, and a waiver is obtained from the Chief of Naval Personnel.

Characterization of service will be honorable unless ELS is appropriate. Use the notification procedure. SPCM CAs have the authority to effect the separation if the member does not object to the separation. If the member objects, send the entire case to the Chief of Naval Personnel (PERS-281/282) for final determination. Send all completed cases by letter of transmittal to the Chief of Naval Personnel (PERS-282/283) for review and final determination.

For additional guidance on separation processing by reason of defective enlistments and inductions due to erroneous enlistment, refer to the MILPERSMAN.

DEFECTIVE ENLISTMENT AND INDUCTIONS - DEFECTIVE ENLISTMENT

This category permits separation of a member by reason of defective enlistment and induction on the basis of defective enlistment. A defective enlistment exists when:

- the member reasonably relied upon a material misrepresentation by recruiting personnel and was induced to enlist by a commitment for which the member was not qualified;

- the member received a written enlistment commitment from recruiting personnel for which the member was qualified that cannot be fulfilled by the naval service; or

- the enlistment was involuntary; for example, one that is induced by fraud or duress or undue influence and not the product of a free and unconstrained choice.

Characterization of service will be honorable unless ELS is appropriate. COs of recruit training commands are authorized to discharge members under their command under this article. For members not assigned to recruit training commands, the Chief of Naval Personnel is the separation authority.

For additional guidance on separation processing by reason of defective enlistment, refer to the MILPERSMAN.

DEFECTIVE ENLISTMENT AND INDUCTION - MINORITY

This category is for discharge of a member for a defective enlistment and induction on the basis of minority.

A member under age 18 is a minor. The minimum age for enlistment is 17. Written consent of a custodial parent or legal guardian must be obtained before enlistment of a minor.

The type of uncharacterized separation given is governed by the member's age when separation processing is commenced or completed. A member who is a minor under the age of 17 is discharged with an order of release from the custody and control of the Navy. If the minor who enlisted without proper consent has attained his or her 17th birthday, discharge is authorized or directed upon satisfactory evidence of true age. An application for discharge must have been submitted by a custodial parent or legal guardian and received by the Navy within 90 days of enlistment to effect the discharge of a member 17 years old.

If the member has attained the age of 18, separation is not warranted under this category. The member has effected a constructive enlistment.

Characterization of service will be (1) under age 17, order of release or (2) over age 17, ELS. Use the notification procedure. A commander of a naval training center, authorized to convene SPCMs, is authorized to act as a separation authority for those members under his or her command. For those members not assigned to a naval training center, the

Chief of Naval Personnel (PERS-282) is the separation authority. Send completed cases to the Chief of Naval Personnel.

For additional guidance on separation processing by reason of defective enlistment due to minority, refer to the MILPERSMAN.

DEFECTIVE ENLISTMENTS AND INDUCTIONS - FRAUDULENT ENTRY INTO NAVAL SERVICE

This category provides for separation of members on the basis of procurement of a fraudulent enlistment, induction, or period of service through any knowingly false representation or deliberate concealment about any of the qualifications or disqualifications of military service.

Characterization of service will be honorable, general or ELS. If the fraud involves concealment of a prior separation for any characterization other than honorable, or the concealed offense would warrant consideration for a discharge under OTH conditions, process the member for a discharge under OTH conditions.

Use either the notification or administrative board procedure depending on the type of discharge sought. COs with SPCM CA are delegated to separate members with honorable, general, or ELS provided the member does not object. In cases where the member objects the Chief of Naval Personnel (PERS-83) is the separation authority. Send the processed case to the Chief of Naval Personnel (PERS-83). Message submission is authorized.

For additional guidance on separation processing by reason of fraudulent enlistment, refer to the MILPERSMAN.

ENTRY LEVEL PERFORMANCE AND CONDUCT

Separate a member for entry level performance or conduct for the following reasons:

- It is determined that the member is unqualified for further military service by reason of unsatisfactory performance or conduct, as evidenced by incapability, lack of reasonable effort, failure to adapt to the naval environment, or minor disciplinary infractions.

- A member with broken service fails to satisfactorily complete indoctrination training.

Nothing in this article prevents separation of a member in an entry level status under another basis for separation. Do not initiate separation processing until the member has been counseled about the deficiencies and has been afforded an opportunity to overcome those deficiencies. Use the notification procedure with the following modification in the member's statement of awareness. "I understand that I am being considered for an administrative discharge by reason of entry level performance and conduct. I have been advised that if the proposed separation is approved it will result in my separation with an uncharacterized discharge identified as entry level separation. "

COs with SPCM CA have the authority to effect the separation provided the member has received counseling, all disciplinary action is complete, and the member does not object. Use the notification procedure. Send the processed case by letter of transmittal to the Chief of Naval Personnel (PERS-83). In those cases where the member objects or the CO does not have the authority to process, send the case to the Chief of Naval Personnel by either letter of transmittal or message. Characterization of service will be ELS.

For additional guidance on separation processing by reason of entry level performance and conduct, refer to MILPERSMAN.

UNSATISFACTORY PERFORMANCE

Separation of a member under this category is authorized when it is determined that the member is unqualified for further naval service by reason of unsatisfactory performance. Unsatisfactory performance is demonstrated by one or more performance evaluations, either regular or special, with unsatisfactory marks for professional factors of 2.6 or below in either military or rating knowledge and performance, or with overall evaluation of 2.6 or below.

You may not use this basis for separation for a member in an entry level status or when processing for misconduct is appropriate.

Do not initiate separation processing until the member has been counseled and has had the opportunity to overcome his or her deficiencies. A page 13 must be issued by the parent command before the latest qualifying evaluation, and it must address the specific unsatisfactory performance.

Characterization of service will be type warranted by service record (TWSR), which is either honorable or general.

COs with SPCM CA may effect the separation provided the member does not object to the separation. If the member objects to separation, the Chief of Naval Personnel (PERS-83) is the separation authority.

Use the notification procedure. Send the processed case by letter of transmittal or message to the Chief of Naval Personnel (PERS-83).

For additional guidance on separation processing by reason of unsatisfactory performance and conduct, refer to the MILPERSMAN.

HOMOSEXUALITY

Due to present (July 1993) changes occurring in policies regarding homosexuals in the military, refer to current directives for guidance regarding this issue.

DRUG ABUSE REHABILITATION FAILURE

A member who has been referred by his or her CO to a level II or III rehabilitation treatment program for personal drug abuse may be separated when he or she:

- demonstrates an inability or refusal to participate in, cooperate in, or successfully complete a level II or III rehabilitation program;
- has an alcohol incident or drug-related incident anytime in his or her career following completion of level II or III and there is no potential for further service;
- fails to follow a directed level II or III aftercare program; or
- returns to drug abuse following level II or III rehabilitation treatment and there is no potential for further service.

Characterization of service will be TWSR (honorable or general or ELS. Use the notification procedure. COs with SPCM CA may effect the separation provided the member does not object. If the member objects, the Chief of Naval Personnel (PERS-83) is the separation authority. Send the processed case by letter of transmittal to the Chief of Naval Personnel (PERS-83). The CO's comments must indicate if the member is or is not drug dependent as diagnosed by a physician or clinical psychologist. Message submission is optional.

For additional guidance on separation processing by reason of drug abuse rehabilitation failure, refer to the MILPERSMAN.

ALCOHOL ABUSE REHABILITATION FAILURE

A member who has been referred by his or her CO to a level II or III rehabilitation treatment program for personal alcohol abuse may be separated when he or she:

- demonstrates an inability or refusal to participate in, cooperate in, or successfully complete such a level II or III program;
- has an alcohol incident or drug-related incident anytime in his or her career following completion of level II or III;
- fails to follow a directed level II or III aftercare program; or
- returns to alcohol abuse following level II or III and there is no potential for further service.

Nothing in this article prevents the separation under any other basis for separation, in appropriate cases, of a member who has been referred to such a program. Characterization is TWSR or ELS. Use the notification procedure. COs with SPCM CA may effect separation provided the member does not object. If the member objects the Chief of Naval Personnel (PERS-83) is the separation authority. Forward the processed case by letter of transmittal to PERS-83.

For additional guidance on separation processing by reason of alcohol abuse rehabilitation failure, refer to the MILPERSMAN.

MISCONDUCT

You may separate a member for misconduct when it is determined that the member is unqualified for further military service by reason of one or more of the following:

- Minor disciplinary infractions
- Pattern of misconduct
- Commission of a serious offense (processing not mandatory)
- Commission of a serious offense (processing mandatory)
- Civilian convictions (processing not mandatory)
- Civilian conviction (processing mandatory)

You may not initiate separation processing for a series of minor disciplinary infractions or a pattern of misconduct until the member has been counseled. Reflect the counseling on a page 13 entry or letter. Counseling and rehabilitation are not required for commission of a serious offense of civilian felony conviction. Characterization of service is normally OTH, but characterization as general may be assigned when warranted. When a service member serving in paygrade E-4 or above is separated with an OTH, the member is administratively reduced to paygrade E-3.

Use the administrative board procedure. However, the notification procedure is authorized for use when processing for minor disciplinary infractions. COs with SPCM CA may effect the discharge only if an administrative board recommends separation with a general or honorable discharge and the member does not object. In cases where the member objects the Chief of Naval Personnel (PERS-83) is the separation authority. Regardless of the administrative board's recommendation, the Chief of Naval Personnel is the separation authority for members being separated by reason of misconduct due to commission of a serious offense as evidenced by sexual perversion or sexual harassment. Send the processed case to the Chief of Naval Personnel (PERS-83). Message submission is optional.

For additional guidance on separation processing by reason of misconduct, refer to the MILPERSMAN.

We will now explore each of the previous subcategories under the Misconduct heading in more detail.

Minor Disciplinary Infractions

Minor disciplinary infractions are evidenced by a series of at least three but not more than eight minor violations of the UCMJ (none that could warrant a punitive discharge and none that are drug-related) within the current enlistment that were disciplined by not more than two punishments under the UCMJ. Before initiating processing the member must have violated counseling.

Pattern of Misconduct

A pattern of misconduct is defined as discreditable involvement with civil and/or military authorities as evidenced by one or more of the following:

- Three or more civilian convictions within the current enlistment. The latest civilian conviction and

counseling to have occurred while assigned to the parent command.

- Three or more punishments under the UCMJ within the current enlistment. The latest offense and counseling must have occurred while assigned to the parent command.

- Any combination of three minor civilian convictions (and punishments under the UCMJ) within the current enlistment. The latest offense and counseling must occur at the parent command.

- Three or more periods of unauthorized absence of more than 3 days' duration, each within the current enlistment. The latest offense and counseling must occur at the parent command.

- Nine or more violations (specifications) of the UCMJ within the current enlistment that have been disciplined by punishment under the UCMJ. The latest offense and counseling must occur at the parent command.

- A set pattern of failure to pay just debts.

- A set pattern of failure to contribute adequate support to dependents or failure to follow orders, degrees, or judgments of a civil court.

Commission of a Serious Offense (Processing not Mandatory)

An individual may be processed when a punitive discharge would be authorized by the *Manual for Courts-Martial*, (MCM) for the same or a closely related offense.

Commission of a Serious Offense (Processing Mandatory)

An individual must be processed when the CO believes that an individual committed extremely serious misconduct that resulted in, or had the potential to result in death, or serious bodily injury, such as but not limited to homicide, arson, or armed robbery.

An individual must also be processed when an incident involves sexual behavior that deviates from socially acceptable standards of morality and decency. Such behavior may include, but is not limited to: lewd and lascivious acts, sodomy, indecent assault, indecent acts, and indecent exposure. If circumstances involve an incestuous relationship, notify the Chief of Naval Personnel (PERS-661/83) immediately upon discovery.

An individual must also be processed following punitive actions on the first substantiated incident of sexual harassment involving (1) threats or attempts to influence another's career or job for sexual favors, (2) rewards in exchange for sexual favors, or (3) physical contact of a sexual nature that could result in punitive discharge, if charged.

Civilian Conviction (Processing not Mandatory)

This subcategory allows for processing of a member based on a conviction by civilian authorities or action taken that is equivalent to a finding of guilty provided the offense could warrant a punitive discharge or the sentence includes confinement for 6 months or more without regard to suspension or probation. Separation processing may be initiated whether or not the member has filed an appeal or has stated an intention to do so.

Civilian Conviction (Processing Mandatory)

An individual must be processed based on a conviction by civilian authorities, or action taken that is equivalent to a finding of guilty, that involved an offense that either resulted in, or had the potential to result in death or serious bodily harm.

MISCONDUCT DUE TO DRUG ABUSE

A member must be mandatorily processed for separation by reason of misconduct due to drug abuse based upon one or more military or civil convictions for the following:

- Drug abuse—the illegal or wrongful use or possession of controlled substance(s)

- Drug trafficking—the sale, transfer, or possession with intent to sell or transfer, controlled substance(s)

- Drug paraphernalia—all equipment, products, and materials that are used, intended for use, or designed for use in injecting, ingesting, inhaling, or otherwise introducing into the body controlled substances

For guidance as to when separation processing is mandatory, refer to OPNAVINST 5350.4B.

Characterization of service is normally OTH. Assign a TWSR or an ELS characterization when separation processing is based solely on urinalysis test (fitness for duty) results or when separation processing is based solely on drug abuse divulged through the

voluntary self-referral program. Send all cases, except those where a TWSR or an ELS is assigned, to the Chief of Naval Personnel via the Enlisted Performance Division (PERS-83) for final approval. For members not in an entry level status, characterization of service as honorable is not authorized unless the member's record is otherwise so meritorious that any other characterization would be inappropriate.

Use the administrative board procedure. COs with SPCM CA may process a member under the notification procedure when separation processing is based solely on urinalysis results (fitness for duty). Send the processed case by letter of transmittal or message to the Chief of Naval Personnel (PERS-83).

You must include a medical officer's or clinical psychologist's evaluation of the member's drug dependency as evaluated subsequent to the most recent drug incident with the case.

For additional guidance on separation processing by reason of misconduct due to drug abuse, refer to the MILPERSMAN.

SEPARATION IN LIEU OF TRIAL BY COURT-MARTIAL

This category provides for a member to request separation in lieu of trial by court-martial. Charges must have been preferred against the accused with respect to an offense for which a punitive discharge is authorized to be awarded. The member's CO must determine that the member is unqualified for further naval service.

If a member is serving in paygrade E-4 or above, he or she must also request administrative reduction to paygrade E-3 before the request is approved.

Characterization of service will normally be OTH, but ELS may be assigned under certain cases.

Refer to the MILPERSMAN for the proper format for the member to use to submit the request.

Send the request for discharge via the chain of command to the officer exercising general court-martial jurisdiction (OEGCMJ). The member's CO must recommend approval or disapproval and certify the accuracy of the charges and enclose the proper enclosures.

The OEGCMJ is authorized to approve or disapprove such requests. The OEGCMJ may also order the discharge executed and direct reduction to paygrade E-3 if the member is serving in a higher paygrade.

When final action is taken, send the original request with all enclosures and endorsements to the Chief of Naval Personnel (PERS-83) for inclusion in the member's permanent record.

For additional guidance on separation processing by reason of separation in lieu of court-martial, refer to the MILPERSMAN.

SECURITY

This category permits separation of a member by reason of security when retention is clearly inconsistent with the interests of national security (for example, cases of treason or espionage).

Recommendations for separation must cite valid evidence that there is a reasonable basis for doubting the member's loyalty to the U.S. Government. When a CO determines that separation may be appropriate, obtain approval from the Chief of Naval Personnel (PERS-81) before initiating separation processing.

Characterization of service will be honorable, general, or OTH. Use the notification procedure except where circumstances warrant an OTH in which case use the administrative board procedure. The Chief of Naval Personnel (PERS-81) is the separation authority. Send the processed case by letter of transmittal to the Chief of Naval Personnel (PERS-81).

For additional guidance on separation processing by reason of security, refer to the MILPERSMAN.

UNSATISFACTORY PERFORMANCE IN THE READY RESERVE

This category permits separation of inactive duty members of the Ready Reserve who are serving in the Selected Reserve for unsatisfactory participation in the Selected Reserve.

Characterization of service will be honorable, general, or OTH. Use the notification procedure. However, when characterization of OTH is warranted, use the administrative board procedures. Send the processed case by letter of transmittal to the Chief of Naval Personnel (PERS-913).

For additional guidance on separation processing by reason of unsatisfactory performance in the Ready Reserve, refer to the MILPERSMAN.

SEPARATION IN THE BEST INTEREST OF THE SERVICE

Regardless of any limitation on separations set forth in the MILPERSMAN, SECNAV may direct separation of any member at any time. In those cases where no other reason for separation is appropriate, but where separation of a member is considered to be in the best interest of the service, initiate separation processing under this article.

Characterization of service will be honorable, general, or ELS. Use the notification procedure. When separation is for this reason, the right of a member with 6 or more years of total service and Reserve service to request an administrative board is not applicable.

Send the processed case by letter of transmittal to the Chief of Naval Personnel (PERS-83).

For additional guidance on separation processing by reason of best interest of the service, refer to the MILPERSMAN.

COUNSELING

As you have learned, counseling and rehabilitation efforts are a prerequisite to the initiation of separation processing for the following bases for separation:

- Convenience of the government due to parenthood or personality disorder
- Weight control failure
- Entry level performance and conduct
- Unsatisfactory performance
- Misconduct due to minor disciplinary infractions or pattern of misconduct

DRAFTING ADMINISTRATIVE DISCHARGE WARNINGS

The counseling requirements must be accomplished by the member's parent command. If more than one entry is made, the last entry applies. Violation of the entry must have occurred before initiating administrative separation processing.

In any case that counseling is required, provide the member an opportunity to overcome his or her deficiencies. The command's efforts to counsel the member should be documented in the member's service record and must include the following information:

- Written notification about deficiencies or impairments
- Specific recommendations for corrective action, indicating any assistance that is available to the member
- Comprehensive explanation of the consequences of failure to successfully undertake the recommended corrective action
- A reasonable period of time for the member to undertake the recommended corrective action

A sample format for the counseling warning is illustrated in figure 9-2. This counseling warning may be a page 13 entry or a letter. The warning must be dated and signed by the service member. If the member refuses to sign, a notation to that effect should be made in the service record entry and signed and dated by an officer. Include a copy of the counseling warning entry or letter in the administrative separation package.

INFORMING MEMBERS OF THE MEANING AND EFFECT OF DISCHARGE WARNINGS

As stated previously, you must inform the member of the meaning and effect of the discharge warning. Inform the member as clearly and precisely as possible of his or her deficiencies and the recommended corrective action. Advise the service member of the consequences of failure to correct the deficiencies and the time period authorized to correct the deficiency. You also must inform the member that if a new UCMJ violation occurs during that period, that in and of itself violates the warning. Ask the member if he or she has any questions about the warning and, if necessary, explain all elements of the warning until the member fully understands everything.

NOTIFICATION AND ADMINISTRATIVE BOARD PROCEDURES

The two types of procedures used to effect administrative separation processing are the notification procedure and the administrative board procedure. You will use one of these procedures in every case of administrative separation that you process. We will address these procedures in further detail.

1. You are being retained in the naval service; however, the following deficiencies in your performance and/or conduct are identified:

_____.

2. The following are recommendations for corrective action:

_____.

3. Assistance is available through _____

_____.

4. Any further deficiencies in your performance and/or conduct will terminate the reasonable period of time for rehabilitation that this counseling and warning entry implies and may result in disciplinary action and in processing for administrative separation. All deficiencies or misconduct during your current enlistment, occurring before and after the date of this action, will be considered. Subsequent violation(s) of the Uniform Code of Military Justice or conduct resulting in civilian conviction could result in an administrative separation under other than honorable conditions.

5. This counseling and warning entry is made to afford you an opportunity to undertake the recommended corrective action. Any failure to adhere to the guidelines cited above, that is reflected in your future performance and/or conduct, will make you eligible for administrative separation action.

6. This counseling and warning entry is based upon known deficiencies or misconduct. If any misconduct unknown to the Navy is discovered after this counseling and warning is executed, this letter of counseling and warning is null and void.

(Signature of commanding officer)
Or person authorized "by direction"

(date): I hereby acknowledge the above page 13 entry and desire to (make a statement/not make a statement).

(Member's signature)

Witnessed: _____

(Person who actually counseled member)

Figure 9-2.-Sample letter of counseling/warning format.

NOTIFICATION PROCEDURE

In each case of administrative separation, a member (hereafter referred to as respondent) must be notified in writing of the basis for separation processing by his or her CO or OIC. The entire notification procedure is an integral part of the separation processing and current procedures must be used.

Notice

The notice of impending administration separation processing is accomplished by means of a letter from the respondent's CO or OIC. This letter is referred to as a letter of notification. The letter of notification sets forth the specific reasons for processing and the rights of the respondent. The format letter that you will use is contained in the MILPERSMAN, Article 3640200(5).

The original of the letter of notification is kept by the respondent and a copy is included as an enclosure to the transmittal letter requesting separation. The respondent endorses the letter by signing for receipt of it.

You should become familiar with the applicable regulations governing letters of notification so you have a clear understanding of a respondent's rights.

Counsel

Respondents have the right to consult with counsel qualified under Article 27b, UCMJ, before signing their statement of awareness except under the following circumstances:

- When the respondent is attached to a vessel or unit operating away from or deployed outside the United States or away from its overseas home port, or to a shore activity remote from judge advocate resources
- When no qualified counsel is assigned and present at the vessel, unit, or activity
- When the CO does not anticipate having access to qualified counsel from another vessel, unit, or activity for at least the next 5 days
- When the CO determines that the requirements or needs of the naval service require processing before qualified counsel will be available

Appoint nonlawyer counsel whenever qualified counsel is not available. Any appointed nonlawyer counsel will be a commissioned officer with no prior involvement in the circumstances leading to the basis of the proposed separation and no involvement in the separation process itself.

The respondent may also consult with a civilian counsel at the respondent's own expense. The respondent's use of a civilian counsel does not relieve the CO of the requirement to furnish counsel. Consultation with civilian counsel will not delay timely processing.

Response

The response of the respondent to the letter of notification is referred to as a statement of awareness.

The CO will allow a reasonable period of time of not less than 2 working days for the member to respond to the notice. An extension maybe granted on a timely showing of good cause by the respondent. The

respondent's election as to each of the rights, via the statement of awareness, is recorded and signed by the respondent and witnessed by respondent's counsel, if available locally. If the respondent declines to respond to the election of rights, consider it a waiver of rights and proceed with the separation processing. The format letter that you will use is contained in the MILPERSMAN, Article 3640200(6).

ACTION OF THE OFFICER EXERCISING SPCM CA

Officers exercising SPCM CA are delegated authority to separate enlisted personnel with honorable, general, or entry level discharges when the member does not object to separation for the following reasons:

- Parenthood
- Designated physical or mental conditions (somnambulism, enuresis, personality disorder, and excessive height)
- Weight control failure
- Dependency or hardship
- Pregnancy or childbirth
- Surviving son or daughter
- Erroneous enlistment
- Fraudulent enlistment
- Entry level performance and conduct
- Unsatisfactory performance
- Homosexuality (where no OTH is recommended)
- Drug abuse rehabilitation failure
- Alcohol abuse rehabilitation failure

In any case that must be initiated under the administrative board procedure vice the notification procedure an SPCM CA is delegated authority to separate the member when (1) an administrative discharge board recommends separation with a general or honorable characterization, (2) the member does not object to the discharge, and (3) the characterization is consistent with guidelines in the MILPERSMAN.

COs with SPCM CA effect the discharge by issuing a letter to the respondent directing the discharge. Figure 9-3 is a sample letter that a CO with SPCM CA may issue a respondent to effect the discharge. Send a copy

of this letter along with all pertinent documents to the Chief of Naval Personnel for inclusion in the member's permanent record.

If the CO does not have SPCM CA or the member objects to the separation, the case must be referred to the Chief of Naval Personnel for final determination. This is accomplished by either message submission or a standard letter of transmittal.

Message Submission

Do not send cases by message in which an administrative board was held or the CO is the separation authority. While message submission hastens the process and is encouraged, COs must use discretion in determining which cases should be submitted via message. Discretion is appropriate in cases wherein the basis for processing is a character trait or physical or mental deficiency that if it were to become known by the command personnel could create

dissension or further personal embarrassment to the member.

Due to the limitations of the message format, commands processing USNR-R members and members being processed in the best interest of the naval service are not authorized to submit cases via message.

Message transmission will be sent by routine precedence in the format provided in the MILPERSMAN, Article 3640200(11). Make sure all information required is included. Include your servicing personnel support detachment (PSD) as an information addressee.

A message submission must be released by either the CO or the acting CO since it is taking the place of a letter of transmittal. File a copy of the released message in the member's service record.

When you submit an administrative separation case by message, send the supporting documentation

From: (Commanding Officer)

To: (Rate, name, USN(R), SSN of respondent)

Subj: ADMINISTRATIVE SEPARATION DUE TO (BASIS FOR SEPARATION)

Ref: (a) Notice of Notification Procedure Proposed Action dtd _____

(b) Statement of Awareness and Request for or Waiver of Privileges dtd _____

(c) MILPERSMAN (Article processing under)

1. Reference (a) notified you that you were being considered for an administrative discharge from the naval service by reason(s) of (list same as in paragraph 1 of letter of notification). By reference (b), you elected to waive the minimum 2 days to respond to this notification and additionally stated that you do not object to this separation.

2. I have determined that you meet the criteria for discharge included in reference (c). Therefore, I am directing that you be discharged from the naval service for (reason[s]) with a (type characterization) discharge in accordance with the authority vested in me by reference (c). By copy of this letter, PSD (applicable PSD) is directed to effect your separation and to make sure maximum collection of any indebtedness you may have to the government before your discharge.

(Signature of Commanding Officer)

Copy to:

PSD

CHNAVPERS (PERS-____)

Figure 9-3.-Sample letter from CO with SPCM CA executing discharge.

required to complete the package within 15 working days after submission of the message. Supporting documentation includes the command's notice of administrative separation processing, the member's statement of awareness, and other supporting correspondence as required by the specific case. Include a cover memorandum indicating that the documentation supports a message case and include a copy of the message. Make sure the member's full name, rate, SSN, and UIC have been indicated on each page of the case.

Letter of Transmittal

When a case is not submitted by message, the CO or acting CO must sign a letter of transmittal to the Chief of Naval Personnel submitting the case for final action. Letters of transmittal are required in each case when the CO is the separation authority. The letter of transmittal must indicate the date the member was discharged and a copy of the DD 214 must be provided. Make sure the member's full name, rate, and social security number (SSN) have been indicated on each page of the case. The MILPERSMAN, Article 3640200(9) illustrates a sample letter of transmittal.

ADMINISTRATIVE BOARD PROCEDURE

Use the administrative board procedure to process administration separations in the following circumstances:

- When a member with 6 or more years of total active and/or Reserve military service being processed under the notification procedure requests a board
- When the proposed reasons for separation processing require a board
- When the proposed characterization of service is under OTH conditions

If a member being processed for administrative separation is entitled, and elects to present his or her case before a board, strict compliance with the MILPERSMAN is required.

If the CO or OIC of the member's command does not have SPCM CA and the member desires a board, the following procedures will be used. The CO or OIC will give the member the letter of notification and the statement of awareness. The next reporting senior with SPCM CA will convene the administrative discharge board. The member's command will send the case to

the Chief of Naval Personnel via the convening authority (CA), using a standard letter of transmittal.

Notice

When a respondent is going to appear at an administrative discharge board, the respondent will be notified in writing by the CO or OIC who proposed the action by a letter. This letter is referred to as a notice of an administrative board procedure proposed action and is illustrated in the MILPERSMAN, Article 3640200(7). The notice will include the following matters:

The notice is delivered personally to the respondent and, if required, mailed by certified mail, return receipt requested (for a respondent who is in civil confinement).

If the respondent should refuse to acknowledge receipt of the notice, a sworn affidavit of service by mail, as shown in the MILPERSMAN, Article 3640200(10), is prepared and placed in the respondent's service record.

If everything goes normally, and the respondent acknowledges the notice, the respondent will sign and submit a statement of awareness.

Counsel

A respondent has the same right to consult with counsel before electing or waiving any of his or her rights as that prescribed for the notification procedure.

If an administrative board is requested, the respondent will be represented by qualified counsel appointed by the CA or by individual counsel of the respondent's own choice, if that counsel is determined to be reasonably available.

The respondent has the right to consult with civilian counsel of his or her own choice and maybe represented at the hearing by that or any other civilian counsel, all at the respondent's own expense. Exercise by the respondent of this right will not waive any of the respondent's other counsel rights. Consultation with civilian counsel will not unduly delay administrative board procedures. If undue delay appears likely, the CA may direct the board to proceed without the desired civilian counsel after properly documenting the facts.

Nonlawyer counsel may represent a respondent before an administrative board if the respondent expressly declines appointment of qualified counsel and requests a specific nonlawyer counsel or the separation authority assigns nonlawyer counsel as assistant Counsel.

Response

After a respondent is notified of the pending separation processing, the respondent submits to the CO or OIC a signed and witnessed letter indicating his or her choice of rights as outlined in the letter of notification. The response is referred to as a statement of awareness.

The CO or OIC will allow a reasonable period of time, not less than 2 working days, for the member to respond to the notice. An extension may be granted upon a timely showing of good cause. The election of the respondent as to each of the specified rights will be recorded and signed by the respondent and respondent's counsel.

If notice by mail is required and the respondent fails to acknowledge receipt or submit a timely reply, that fact will constitute a waiver of rights and an appropriate notation will be recorded on a retained copy of the form.

A sample format for the respondent's statement of awareness is illustrated in the MILPERSMAN, Article 3640200(8).

ADMINISTRATIVE BOARD

As an LN you will see and be a part of an administrative board proceeding at some time in your career. Your contribution to an administrative board may be indirect such as typing the letter of appointment or direct as a reporter to record verbatim testimony or as a more senior LN, you may even be assigned to act as the recorder. No matter what your involvement, the existence of administrative boards in the overall scheme of separation processing is a fact of life and you must be aware of their purpose and mission. How a board is composed, the duties of board members, and the conduct of the hearing are important pieces to the overall board processes. As the assigned reporter, you maybe asked to record all the proceedings or just the testimony. The next section will allow you to see how the board functions from beginning to end.

CONVENING AUTHORITY

One of the most important steps a CA must carry out is appointing the board members. An administrative board may, by written order, be appointed by any CO with the authority to convene SPCMs. The CA must make sure the appointment prevents the appearance of any impropriety in the assignment of any board members who may have a preconceived opinion about

the findings or recommendations, or both, to be made on the respondent's case.

The CA must appoint at least three commissioned, warrant, or noncommissioned officers well-qualified by reason of grade, leadership, experience, and judicial temperament. Enlisted personnel appointed to the board will be in paygrade E-7 or above and will be senior to the respondent. Enlisted personnel frocked to paygrade E-7 are not eligible for appointment. At least one member of the board will be a line officer serving in grade O-4 or higher.

If the respondent is on active duty when the board convenes, the senior member must be on the active duty list of the service in which the respondent serves. When the respondent is a reservist or holds an appointment as a Reserve commissioned or warrant officer, at least one member must be a Reserve commissioned officer.

To avoid split decisions, the CA should not appoint an even number of members to an administrative board.

If, during the session, one of the members is successfully challenged, the CA should appoint a similarly qualified substitute. Also, with respect to board challenges, if the board has no legal advisor assigned, the CA must rule on all challenges.

APPOINTING ORDER

The CA must issue an appointing order for the administrative board. The order is addressed to the senior member and its purpose is to inform the senior member of the names of the other members, the name of the respondent, and the reason for processing. The recorder is named in the order as well as the lawyer assigned to the respondent. A sample appointing order is shown in figure 9-4.

PRESIDENT OF THE BOARD

The president of an administrative board must make sure he or she and all the members are familiar with the MILPERSMAN articles pertaining to the separation for which the respondent is being processed. During the proceedings, the president presides at the hearing and is responsible for its proper conduct in an atmosphere of decorum and dignity. If there is no legal advisor assigned to the board, the president will rule on all matters of procedure and evidence. However, his or her rulings may be overturned by a majority of the board.

When no legal advisor is assigned, the president advises the CA, after consulting with a judge advocate, to spend funds for producing witnesses when the

From: (Convening Authority)

To: (Senior member of board, rank, name, component, and designator)

Subj: APPOINTMENT OF ADMINISTRATIVE BOARD

Ref: (a) MILPERSMAN 3640200

(b) MILPERSMAN 3640350

1. Per references (a) and (b), an administrative board consisting of yourself as senior member, and of (names of other members including rank or rate, component, and designator, if applicable) is appointed to conduct a hearing in the case of (rate, name, component, SSN) who is being processed for administrative separation by reason(s) of (fill in reason[s] for processing).

2. General procedural instructions and instructions for the conduct of the hearing and submission of the board's report are outlined in reference (b) and shall be followed. The board is directed to make findings of fact relative to the specific reason(s) the respondent is being processed and to make a recommendation with respect to final action of retention, separation, or suspension of separation and to characterization of service or description of separation. The report of an administrative board shall be signed by all members and the counsel for the respondent. The dissent of any member shall be duly recorded in the board report.

3. (Rank, name, component) is appointed to act as recorder for the board.

4. (Rank, name, component) a lawyer certified per Article 27(b), Uniform Code of Military Justice, is appointed to act as counsel for the respondent.

5. The board shall convene at (time, date, location) or as soon thereafter as practical.

(Signature of Convening Authority,)

Commanding Officer, Acting Commanding Officer, or

By direction

Figure 9-4.-Sample appointing letter of administrative board.

president has decided that the witnesses are material. The senior member authenticates the record of proceedings and signs the report of the administrative board.

LEGAL ADVISOR

At the discretion of the CA, a nonvoting legal advisor who is a judge advocate certified according to Article 27(b), UCMJ, may be appointed to the administrative board. If appointed, the legal advisor will rule finally on all matters of procedure, evidence, and challenges, except challenges to himself or herself. A legal advisor will not be junior to, and in the same chain of command as, any voting member of the board.

RECORDER

The CA will further detail an officer on active duty (if the respondent is on active duty) as recorder. The

recorder is not a member of the board, but the importance of the recorder cannot be overlooked. The following are the duties the recorder must perform before, during, and after the board adjourns:

- Performing the clerical and preliminary work of the hearing
- Conducting a preliminary review of available evidence and, before the hearing, interviewing prospective witnesses
- Assembling pertinent directives, regulations, and records for use by the board
- Informing the respondent, legal advisor, essential witnesses and counsel on the time, date, and place of the hearing
- Presenting the case against the respondent
- Preparing the record of proceedings

REPORTER

There is no requirement that a reporter be appointed. Where witnesses are expected to testify, however, the presence of a reporter is desirable to record the witness' statements verbatim.

WITNESS REQUESTS

The respondent may request the attendance of witnesses in his or her behalf at the hearing. The respondent's request will be in writing, dated, signed by the respondent or his or her counsel, and submitted to the CA, via the president of the board, for his or her decision.

If production of a witness will require expenditure of funds by the CA, the written request will also contain the following:

- A synopsis of the testimony the witness is expected to give
- An explanation of the relevance of such testimony to the issue of separation or characterization
- An explanation as to why written or recorded testimony would not be sufficient

The CA may authorize expenditure of funds for production of witnesses. If the CA determines that the personal testimony of a witness is required, the hearing will be postponed or continued, if necessary, to permit the attendance of the witness.

Military witnesses will be issued TAD orders and civilian witnesses will be issued invitational travel orders. Guidance for funding the travel of required witnesses is found in the *Manual of the Judge Advocate General* (JAGMAN).

HEARING PROCEDURE

While board proceedings are not a judicial trial, they are formalized to the extent of assuring full opportunity for presentation of the respondent's case.

If objections are made at any stage, the president of the board, or legal advisor, will make a formal ruling on the objection and make sure both the objection and basis of the objection are noted in the record.

Any member of the board or legal advisor may be challenged only on grounds that show that the member cannot render a fair and impartial decision.

The president of the board, upon calling the board to order, directs the recorder to make a record as to the time, date, and place of the hearing. The recorder also records the identity and presence of the appointed members, the recorder, the respondent and respondent's counsel, and the qualifications of the counsel.

Preliminaries

At the outset of the hearing, the president of the board inquires of the respondent about his or her knowledge of his or her rights, including the following rights:

- To appear in person, with or without counsel, or, in his or her absence, have counsel represent him or her at all open board proceedings
- To challenge any voting member of the board, for cause only
- To request the personal appearance of witnesses at the administrative board
- To submit, either before the board convenes or during the proceedings, sworn or unsworn statements, depositions, affidavits, certificates or stipulations, including depositions of witnesses not reasonably available or unwilling to appear voluntarily
- To testify, in his or her own behalf, under oath and submit to cross-examination or, in the alternative, to make or submit an unsworn statement and not be cross-examined
- To question any witnesses who appear before the board
- To examine all documents, reports, statements, and evidence available to the board
- To be informed of, and to interview, all witnesses to be called
- To have witnesses excluded except while testifying
- To make argument

NOTE: A failure on the part of the respondent to exercise any of these rights, after being advised of them, will not bar the board's proceedings.

The president explains the purpose of the board and that the proceedings are administrative in nature. The board is not a formal fact-finding tribunal nor a judicial trial; however, this does not prevent the board from

being conducted in a formal atmosphere. When the president is finished with the preliminaries, he or she turns the proceedings over to the recorder.

Rules of Evidence

An administrative board functions as an administrative rather than a judicial body. Consequently, the strict rules of evidence applicable at courts-martial do not apply. Other than Article 31, UCMJ limitations, the board should consider any competent evidence that is relevant and material to the case. The respondent must be provided a Privacy Act statement whenever personal information is solicited. Make sure the respondent signs the Privacy Act statement (fig. 9-5) and that a copy is retained in the case file.

Presentation of Evidence

The recorder presents the case for the government, providing the board with complete and impartial information. Next, the respondent has the opportunity to present matters in his or her behalf. Following any matter presented by the respondent, the recorder may, when he or she deems it appropriate, present rebuttal evidence. When the recorder introduces rebuttal evidence, the respondent is entitled to do likewise. Finally, before closing for deliberation, the board may call any witness or hear other evidence it deems appropriate. Witnesses are not present during open sessions except when testifying. After all evidence is in

and questioning and oral arguments are complete, the hearing closes with only the voting members present.

Burden of Proof

The burden of proof before administrative boards is on the government and the standard of proof to be employed is the “preponderance of evidence” test.

BOARD DECISIONS

The board deliberates and votes on its findings and recommendations in closed session. Only voting members of the board are present during deliberations and voting.

The board determines whether each allegation set forth in the notice of proposed separation is supported by a preponderance of the evidence. The board determines the specific reason(s) for separation and whether the findings warrant separation with respect to the reason(s) set forth in the notice. Also, if the respondent is being processed for more than one reason, there must be a separate determination for each reason. The board must make a recommendation as to retention or separation and suspension of the separation. The board states the following in open proceedings and on the record:

- The specific evidence it considered relating to each act, omission, or circumstance alleged in the notice
- Its determination for each alleged act, omission, or circumstance that the preponderance of evidence

Under the authority of 5 U.S.C. 301 and 10 U.S.C. 5031 and 5032, DOD Directive 1332.14, SECNAVINST 1910.4, and the MILPERSMAN, information regarding your personal background may be requested to provide the administrative board in your case with additional information upon which to recommend your retention or separation and, if separation is recommended, the characterization of service. The information provided by you will become a permanent part of the record of proceedings of the administrative board and may be used by officials of the Department of the Navy in making recommendations or decisions in your case and by employees and officials of the Department of Defense, the Department of Veterans Affairs, and other federal or state agencies in the performance of their official duties. Disclosure of this information is voluntary.

(Signature, rate, SSN and date)

Figure 9-5.—Privacy Act statement of respondent.

does or does not support that act, omission, or circumstance

- The specific reason(s) for separation set forth in the notice of proposed separation that each act, omission, or circumstance applies

The report of the administrative board should be completed immediately upon concluding the board in the format provided in the MILPERSMAN, Article 3640350(8).

RECORD OF PROCEEDINGS

A record of proceedings is a summary of the facts and circumstances, accompanied by supporting documents, on which the recommendation of the administrative board is based, including a summary of the testimony of all witnesses heard at the board. In addition, it must contain the following:

- The identity of the members of the board
- The identity of the legal advisor, if assigned, and his or her qualifications
- The identity of the respondent's counsel and his or her qualifications
- The identity of the recorder
- A verbatim record of the board's findings and recommendation(s)

The findings and recommendations of the board must be verbatim and the entire record must be authenticated by the president of the board, or another member if the president is not available.

The respondent's counsel must be furnished with a copy of the record of proceeding. The counsel will indicate that he or she has examined the summary of the testimony heard and has examined all supporting documents in the record. If counsel is not in agreement, the counsel may send a statement of deficiencies to the CA for inclusion in the report of the administrative board. A sample format of the record of proceedings of an administrative board is contained in the MILPERSMAN, Article 3640350(7).

ACTION BY THE CONVENING AUTHORITY

If the CA determines that the respondent should be retained, the case may be closed. However, any case in which processing is mandatory according to the

MILPERSMAN, the matter must be referred to the Chief of Naval Personnel for disposition.

If the CA decides that separation is warranted or separation processing is mandatory, the case is sent directly to the Chief of Naval Personnel for action. Any discharge recommendation must be signed by the CO personally; no By direction signature is authorized.

The CA will make and send to the Chief of Naval Personnel a recommendation with respect to (1) the specific reason(s) for separation, (2) the final action of retention, separation, or suspension of separation, (3) the characterization of service for those eligible for transfer to Fleet Reserve or Retired List and (4) the paygrade in which they should be transferred. The CA should not make a less favorable discharge characterization recommendation than what was made by the board.

Once all these requirements are met, the proceedings and all documents attached are sent by the CA via a letter of transmittal, as shown in the MILPERSMAN, Article 3640200(9).

PROCESSING GOALS

To make sure efficient administration of enlisted separations is maintained, SECNAV has established processing time goals. The following is the established processing goals for administrative separation cases:

- By the date of expiration of current enlistment or fulfillment of service obligation for separations.
- A total of 15 working days from the date a command notifies a member of the commencement of a separation proceeding to the date of separation when the notification procedure is used and the CO has authority to effect the separation. Commands will send the case by letter of transmittal to the Chief of Naval Personnel indicating the date of separation.
- A total of 30 working days from the date a command notifies a member of the commencement of a separation proceeding to the date of separation, when the notification procedure or administrative board procedure (no board convened) is used and the case is sent to the Chief of Naval Personnel for final action. Commands should send the letter of transmittal or message request within 10 days from the date the member is notified.
- A total of 50 working days from the date a command notifies a member of the commencement of a separation proceeding to the date of separation when

an administrative board is convened. Commands should send the processed case to the Chief of Naval Personnel within 30 working days from the date the member is notified.

- A total of 55 working days from the date a command notifies a member of the commencement of a separation processing to the date of separation when final action on the case is required by SECNAV. Commands should send the letter of transmittal or message within 10 working days from the date the member is notified or submit a letter of transmittal within 30 working days from the date the member is notified and an administrative board has recommended retention, or the offense(s) being considered is evidenced by an SPCM or a GCM conviction that did not award a punitive discharge.

ACTION BY THE SEPARATION AUTHORITY

Upon receipt of the administrative board proceedings, the Chief of Naval Personnel, as the separation authority, takes action regarding the recommended discharge and recommended characterization of service. The MILPERSMAN outlines all the possible choices of action that are available to the Chief of Naval Personnel.

If the Chief of Naval Personnel approves the board's findings and recommendations, in whole or in part, with respect to more than one reason for separation, he or she will designate the most appropriate basis as the primary reason for reporting purposes.

THE NAVAL DISCHARGE REVIEW BOARD AND THE BOARD FOR CORRECTION OF NAVAL RECORDS

The purpose, jurisdiction, and scope of the NDRB and the BCNR will be explained during the separation processing of any member being discharged under OTH conditions, including members authorized to proceed home in a leave status to await final action on a punitive discharge. An entry will be made on the Administrative Remarks, NAVPERS 1070/613, page 13 of the service record, and signed by the member, to signify compliance.

The NDRB was established pursuant to the Servicemen's Readjustment Act of 1944 to review, as provided in 10 U.S.C. § 1553, upon the petition of whether under reasonable standards of naval administration and discipline, the type and nature of the

discharge should be changed, corrected, or modified; and if so, to decide what change, correction, or modification should be made.

The NDRB has no authority to revoke any discharge; reinstate any person in the military service or recall any person to active duty; waive discharges to permit enlistment in the naval service; cancel enlistment contracts, change, correct, or modify any document other than the discharge document; change the reason for discharge from or to physical disability; or determine eligibility for veterans' benefits.

The BCNR was established under the Legislative Reorganization Act of 1946 to relieve the Congress of the burden of considering private bills for the correction of naval records.

When a no-change decision has been rendered by the NDRB, a petition may then be filed with the BCNR within 3 years of the date of discovery of the error or injustice.

In connection with review of executed discharges by both the NDRB and the BCNR, there is no law or regulation that provides that an unfavorable discharge may be upgraded based solely on the passage of time or good conduct in civilian life subsequent to leaving the service.

Applications for review should be submitted on the Application for Correction of Military Records, DD Form 149, in the case of BCNR, and the Application for the Review of Discharge or Dismissal from the Armed Services, DD Form 293, in the case of NDRB. These forms may be obtained by writing to the Board for Correction of Naval Records, Washington, DC 20370 or the Naval Discharge Review Board Suite 905, 81 N. Randolph Street, Arlington, Virginia 22203.

SUMMARY

As an LN the serious nature of administrative separations cannot be taken lightly. Although you may not encounter administrative separation processing on a daily basis, you should appreciate the detail that goes into the overall process. For example, as you saw during the Administrative Board section, if the CA is not careful when selecting board members the CA could jeopardize the entire case. Your familiarization with applicable regulations regarding specific administrative separation cases will enhance both your job performance and the Navy's as well. A case that is processed properly makes for a smooth transition of events from the command to BUPERS.